

22156

IN THE U.S. PATENT AND TRADEMARK OFFICE

Inventor **Martin HIRSCH et al**
Patent App. **10/088,426 (US Nat'l phase of PCT/EP00/06174)**
Filed **12 June 2002**
For **DEVICE FOR THERMALLY TREATING GRANULAR SOLID MATTER**
Art Unit **Not known**

Hon. Commissioner of Patents
Box 1450
Alexandria, VA 22313-1450

PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a)
OR IN THE ALTERNATIVE PETITION TO REVIVE AN ABANDONED APPLICATION
UNDER 37 CFR 1.137(b) ON THE GROUNDS OF UNINTENTIONAL DELAY

Now come Applicants, by their duly appointed attorneys,
the undersigned, and respectfully petition for withdrawal of the
notice of abandonment dated 1 March 2004, and reinstatement of this
application, and, in the alternative, petition for revival of this
application on the ground that the abandonment thereof was uninten-
tional and without deceptive intention.

STATEMENT OF FACTS

Applicants filed the instant patent application (U.S.
National Phase of PCT/EP00/06174) on 15 March 2002 and was assigned
serial no. 10/088,426. See the Post Card with the Patent and
Trademark Office Mail Room Stamp of 15 March 2002 and the
abovementioned serial number (Exhibit "A"). The instant patent

Certificate of Express or First-Class Mailing

I hereby certify that I have deposited this correspon-
dence with the US Postal Service as first-class or, if a
mailing-label number is given below, as express mail
addressed to Comm. of Patents, Washington, DC
20231 on the below-given date.

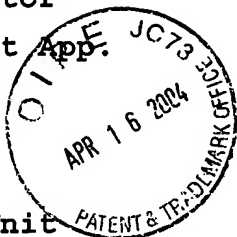
APR 16 2004

Date
EV257247165

Express-mail label number

Signature

Conf. No. 1769



RECEIVED

application was initially filed without the Applicants' declaration and power of attorney or assignment or the PCT Documents. Instead these documents were filed on 12 June 2002. As proof of the filing of these documents see Exhibit "B" which is a Record of Transmittal-PCT Application bearing a Certificate of Express Mailing dated 12 June 2002. The following are included as attachments to Exhibit "B":

Attachment B1: post card with the Patent and Trademark Office Mail Room Stamp of 12 June 2002 itemizing the documents enclosed with the Record of Transmittal;

Attachment B2: a first declaration and power of attorney signed by each of the five Applicants with the exception of Eberhard Stolarski. The declaration indicated that Eberhard Stolarski was deceased and also provided his citizenship, residence and post office address at the time of his death;

Attachment B3: a second declaration and power of attorney signed by Kristina Stolarski, Executrix of the Estate of Eberhard Stolarski, and indicating her citizenship, residence and post office address at the time she executed the declaration and power of attorney on 27 April 2002; and

Attachment B4: a first assignment signed by each of the five Applicants with the exception of Eberhard Stolarski;

Attachment B5: a second assignment signed by Kristina Stolarski, Executrix of the Estate of Eberhard Stolarski;

Attachment B6: a PCT Preliminary Examination Report;

Attachment B7: PTO-2038 authorizing payment of the \$130 surcharge for late filing of the oath or declaration; and

Attachment B8: PTO-2038 authorizing payment of \$40 for the assignment fee.

On 18 June 2002 the Patent and Trademark Office sent the Applicants a Notification of Missing Requirements Under 35 USC 371 (Exhibit "C"). The Notification apparently crossed with Applicants' Transmittal of 12 June 2002 and requested that Applicants submit the following documents:

- (1) an oath or declaration of the inventors and
- (2) payment of a \$130 surcharge for providing the oath or declaration more than 30 months from the priority date; and
- (3) a notification of missing requirements under 35 USC 371.

Applicants filed a timely Communication (Exhibit "D") in response to the outstanding notification on 24 June 2002. The Communication included copies of all of the documents that Applicants sent to the Patent and Trademark Office as part of Exhibit "B" and a request that the Patent and Trademark Office issue a Notice of Acceptance of Application (Form PCT/DO/EO/903).

On 29 July 2002 Applicants filed a Communication (Exhibit "E") which included a certified copy of the Inheritance Certificate for the Estate of Eberhard Stolarski (Attachment E1) along with a sworn English translation thereof (Attachment E2) to establish the heirs of Eberhard Stolarski. The Commissioner's Office on 1 October 2002 issued a Decision on Papers Under 37 CFR 1.42 (Exhibit "F") treating Applicants' Communication of 24 June 2002 as a Petition to the Commissioner Under 37 CFR 1.181. The Decision indicated that Applicants' submissions of 12 June 2002 failed to comply with the requirements of 37 CFR 1.42 and 37 CFR 1.497(b)(2) and so it would not be appropriate to accord the application status pursuant to 37 CFR 1.42 on the basis of the present record. The Decision then dismissed the Applicants' "Petition" as moot. The reason why the petition was dismissed as moot is given in the paragraph bridging pp 1 and 2 of the decision:

Review of the application file reveals the presence of two executed declarations received on 12 June 2002. Accordingly the petition under 37 CFR 1.181 is dismissed as moot.

No further explanation is provided in the decision as to why the Commissioner's Office determined that Applicants' "petition" had become moot and that the petition was dismissed, without prejudice.

As explained earlier in this petition Applicants did indeed submit two declarations on 12 June 2002 as part of their Record of Transmittal-PCT Application. One declaration was signed by all of the Applicants except for the deceased inventor

Eberhard Stolarski. The other declaration was signed by Eberhard Stolarski's widow, Kristina Stolarski, Executrix of the Estate of Eberhard Stolarski. The Executrix of the decedent's estate is the decedent's legal representative. Why should submission of these two declarations render the Applicants' so-called "petition" of 24 June 2002 moot?

In the last paragraph on page 2 of the decision it is indicated that the reason that Applicants were not accorded application status under 37 CFR 1.42 is that the declaration signed by Kristina Stolarski as the legal representative of the deceased Applicant Eberhard Stolarski fails to include the citizenship, residence and mailing address of the legal representative. Here the decision is incorrect. The declaration signed by Kristina Stolarski (Attachment B3) indicates that her postal address is Henricusstr. 31, 61440 Oberursel, Germany, and that she is a citizen of Germany and a legal resident of Oberursel, Germany. Accordingly Applicants maintain that their submissions on 12 June 2002 were in full compliance with all of the requirements of 37 CFR 1.42 and 37 CFR 1.497(b)(2) and that they should have been accorded full application status. Furthermore the communication of 29 July 2002 also included the post office address, citizenship and legal residence of Kristina Stolarski, legal representative of the deceased inventor.

Applicants were very surprised to receive the decision dated 1 October 2002 since they believed that they had complied with all of the requirements of 37 CFR 1.42 and 1.497(b)(2) and since they had never filed a Petition to the Commissioner Under 37 CFR 1.181. When the decision indicated that the so called "petition" had become moot and was dismissed without prejudice, Applicants believed that the application would be assigned to an Examiner and that the examination of the application would proceed. Nowhere in the decision was there any indication that Applicants were required to file any responsive paper within any particular time period. Having received no further communication from the Patent and Trademark Office, Applicants indicated their surprise in a Communication filed 23 December 2003 (Exhibit "G").

The only reply received by the Applicants to their communication of 23 December 2003 is a Notification of Abandonment (Exhibit "H") mailed 1 March 2004 which indicates that the application became abandoned for Applicants' failure to properly respond to the Decision on Papers of 1 October 2002 (Exhibit "F").

RELIEF REQUESTED

The undersigned in behalf of Applicants hereby requests that the Notification of Abandonment be withdrawn as erroneous and improper in that Applicants' submission of 12 June 2002 with or

without their additional submissions of 24 June and 29 July 2002 were entirely adequate to comply with all requirements of 37 CFR 1.42 and 37 CFR 1.497(b)(2). Applicants should have been accorded full application status following receipt by the Patent and Trademark Office of their Transmittal of 12 June 2002. Furthermore there was no indication in the Commissioner's Decision of 1 October 2002 that Applicants were required to file any kind of responsive pleading to prevent the application from becoming abandoned let alone the setting of a specific term for response.

ALTERNATIVE RELIEF REQUESTED

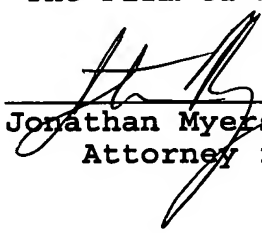
Should the prior request for relief not be granted or grantable here, the undersigned petitions for revival of the application on the ground that the abandonment was unintentional under 37 CFR 1.137(b) and authorizes the fee for the Petition for Revival be charged to the Deposit Account 18-2025 of the undersigned.

The facts supporting the unintentional abandonment are of record.

CONCLUSION

The Notification of Abandonment should be withdrawn and the application should be forwarded to the Examiner for further examination.

Respectfully submitted,
The Firm of Karl F. Ross P.C.


Jonathan Myers, Reg. No. 26,963
Attorney for Applicant

er
April 13, 2004
5676 Riverdale Avenue Box 900
Bronx, NY 10471-0900
Cust. No.: 535
Tel: (718) 884-6600
Fax: (718) 601-1099

Enclosures: Exhibit A - Postcard 15 March 2002
Exhibit B - Record of Transmittal-PCT Application
Exhibit C - Notification of Missing Requirements
Exhibit D - Communication filed 24 June 2002
Exhibit E - Communication filed 29 July 2002
Exhibit F - Decision of Papers Under 37 CFR 1.42
Exhibit G - Communication filed 23 December 2003
Exhibit H - Notification of Abandonment
Attachment B1 - Postcard 12 June 2002
Attachment B2 - Declaration and Power of Attorney
(5 signatures)
Attachment B3 - Declaration and Power of Attorney
(1 signature)
Attachment B4 - Assignment (5 signatures)
Attachment B5 - Assignment (1 signature)
Attachment B6 - PCT Preliminary Examination Report
Attachment B7 - Copy of PTO 2038 - \$130 late filing fee
Attachment B8 - Copy of PTO 2038 - \$40 assignment fee
Attachment E1 - Inheritance Certificate for the Estate
of Eberhard Stolarski
Attachment E2 - Sworn English Translation of
Inheritance Certificate

Attachment "B2"

56

DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that: My residence, post-office address, and citizenship are as stated below next to my name,
I believe that I am an original joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled

DEVICE FOR THERMALLY TREATING GRANULAR SOLID MATTER

the specification of which was filed on 3 July 2000 as PCT application PCT/EP00/06174.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56. I hereby claim foreign priority benefits under 35 USC 119 of any foreign applications for patent or inventor's certificate listed below and have also identified below any foreign applications for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

	<u>Prior Foreign Applications</u>		
Country	Number	Filing Date	Priority claimed
DE	19944778.0	17 September 1999	Yes

I hereby claim the benefit under 35 USC 120 of the United States Application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States Application(s) in the manner provided by the first paragraph of 35 USC 112, I acknowledge the duty to disclose material information as defined in 37 CFR 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Serial Number	Filing Date	Status
PCT/EP00/06174	3 July 2000	Pending

I hereby appoint as attorneys to prosecute this application and to transact all business connected therewith: Herbert Dubno, Reg. 19,752; Jonathan Myers, Reg. 26,963; Andrew Wilford, Reg. 26,597 and each of them individually.

Address all correspondence to:

The Firm of Karl F. Ross, P.C.
Customer Number 535

5676 Riverdale Avenue, Box 900
Bronx, New York 10471-0900

Direct all telephone calls to:

(718) 884-6600

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or

both, under 18 USC 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor:

Martin HIRSCH

Inventor's signature

Martin Hirsch

Date:

18.4.02

Residence: Friedrichsdorf, Germany

Citizen of Germany

Post-office Address: Am Vogelschutz 5, D-61381 Friedrichsdorf, Germany

Full name of second inventor:

Andreas ORTH

Inventor's signature

Andreas Orth

Date:

18.4.02

Residence: Friedrichsdorf, Germany

Citizen of Germany

Post-office Address: ~~Römerstrasse 7~~, D-61381 Friedrichsdorf, Germany

Obere Römerholzstr. 132

Full name of third inventor:

Eberhard STOLARSKI, deceased,

executed by Kristina STOLARSKI, Executrix

Inventor's signature

Date:

Residence: Oberursel, Germany

Citizen of Germany

Post-office Address: Taunusstrasse 104 b, D-61440 Oberursel, Germany

Full name of fourth inventor:

Hans-Werner SCHMIDT

Inventor's signature

Hans-Werner Schmidt

Date:

17.4.2002

Residence: Frankfurt/Main, Germany

Citizen of Germany

Post-office Address: Hasselhorstweg 9, D-60599 Frankfurt/Main, Germany

Full name of fifth inventor:

Werner STOCKHAUSEN

Inventor's signature

Werner Stockhausen

Date:

24.04.2002

Residence: Bad Vilbel, Germany

Citizen of Germany

Post-office Address: An der Bleiche 4, D-61118 Bad Vilbel, Germany

9900 5545

Attachment 'B3'

i6

DECLARATION AND POWER OF ATTORNEY

As a below named inventor, I hereby declare that: My residence, post-office address, and citizenship are as stated below next to my name,
I believe that I am an original joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled

DEVICE THERMALLY TREATING GRANULAR SOLID MATTER

the specification of which was filed on 3 July 2000 as PCT application PCT/EP00/06174.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56.

I hereby claim foreign priority benefits under 35 USC 119 of any foreign applications for patent or inventor's certificate listed below and have also identified below any foreign applications for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Applications

Country	Number	Filing Date	Priority claimed
DE	19944778.0	17 September 1999	Yes

I hereby claim the benefit under 35 USC 120 of the United States Application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States Application(s) in the manner provided by the first paragraph of 35 USC 112, I acknowledge the duty to disclose material information as defined in 37 CFR 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Serial Number	Filing Date	Status
PCT/EP00/06174	3 July 2000	Pending

I hereby appoint as attorneys to prosecute this application and to transact all business connected therewith: Herbert Dubno, Reg. 19,752; Jonathan Myers, Reg. 26,963; Andrew Wilford, Reg. 26,597 and each of them individually.

Address all correspondence to:

The Firm of Karl F. Ross, P.C.
Customer Number 535

5676 Riverdale Avenue, Box 900
Bronx, New York 10471-0900
(718) 884-6600

Direct all telephone calls to:

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or

both, under 18 USC 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor:

Martin HIRSCH

Inventor's signature Martin Hirsch Date: 04/02/02

Residence: Friedrichsdorf, Germany

Citizen of Germany

Post-office Address: Am Vogelschutz 5, D-61381 Friedrichsdorf, Germany

Full name of second inventor:

Andreas ORTH

Inventor's signature Andreas Orth Date: 03/20/02

Residence: Friedrichsdorf, Germany

Citizen of Germany

Post-office Address: ~~Römerstrasse 7~~, D-61381 Friedrichsdorf, Germany

Deine Römerhofstrasse 132

Full name of third inventor:

Eberhard STOLARSKI, deceased,

executed by Kristina STOLARSKI, Executrix

Inventor's signature Kristina Stolarski Date: 04/27/02

Residence: Oberursel, Germany

Henricusstr. 31

Citizen of Germany

Post-office Address: ~~Tennusstrasse 104 b~~, D-61440 Oberursel, Germany

Full name of fourth inventor:

Hans-Werner SCHMIDT

Inventor's signature Hans Werner Schmidt Date: 27/03/02

Residence: Frankfurt/Main, Germany

Citizen of Germany

Post-office Address: Hasselhorstweg 9, D-60599 Frankfurt/Main, Germany

Full name of fifth inventor:

Werner STOCKHAUSEN

Inventor's signature Werner Stockhausen Date: _____

Residence: Bad Vilbel, Germany

Citizen of Germany

Post-office Address: An der Bleiche 4, D-61118 Bad Vilbel, Germany

22156

ASSIGNMENT

In Consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, we the undersigned,
Martin HIRSCH, Am Vogelschutz 5, Friedrichsdorf, Germany;
Andreas ORTH, Römerstrasse 7, Friedrichsdorf, Germany; *Oberer Römerhofstr. 132*
Eberhard STOLARSKI, Taunusstrasse 104-b, Oberursel, Germany; *Henricusstr. 31*
Hans-Werner SCHMIDT, Hasselhorstweg 9, Frankfurt/Main, Germany; and
Werner STOCKHAUSEN, An der Bleiche 4, Bad Vilbel, Germany

hereby sell, assign and transfer to

OUTOKUMPU Oij

a company of Finland having a place of business at

**Riihitontuntie 7 D
 02202 Espoo
 Finland**

its successors, assigns, and legal representatives, our entire right title and interest for the United States and all foreign countries, in and to the improvements disclosed in the application for United States Letters Patent which has been executed by the undersigned concurrently herewith as the US national phase of PCT application PCT/EP00/06174 filed 3 July 2000 and which is entitled

DEVICE FOR THERMALLY TREATING GRANULAR SOLID MATTER

and in and to the application and all divisional, continuing, substitute, renewal, reissue, and all other applications for Letters Patent which have been or shall be filed in the United States and all foreign countries on the improvements; and in and to all original and reissued patents which have been or shall be issued in the United States and all foreign countries on the improvements.

We agree that the Assignee may apply for and receive Letters Patent for the improvements in its own name; and that, when requested, without charge to but at the expense of the Assignee, its successors, assigns, and legal representatives, to carry out in good faith the intent and purpose of this Assignment, the undersigned will execute all rightful Oaths, Assignments, Powers of Attorney, and other papers; communicate to the Assignee, its successors, assigns, and representatives, all facts known to the undersigned relating to the improvements and the history thereof; and generally do everything possible which the Assignee, its successors, assigns, or representatives shall consider desirable for aiding in securing and maintaining proper patent protection for the improvements and for vesting title to the improvements and all applications for patents and all patents on the improvements in the Assignee, its successors, assigns, and legal representatives; and

We covenant with the Assignee, its successors, assigns, and legal representatives that no assignment, grant, mortgage, license, or other agreement affecting the rights and property herein conveyed has been made to others by the undersigned, and that full right to convey same as herein expressed is possessed by the undersigned.

Date: 18.4.02

Martin Hirsch
Martin HIRSCH

Date: 18.4.02

Andreas Orth
Andreas ORTH

Date: _____

Eberhard STOLARSKI

(deceased) executed by Kristina STOLARSKI, Executrix

22156

Ser. No. Not known - US phase of PCT/EP00/06174

☒ Date: 17.4.2002

Hans-Werner Schmidt
Hans-Werner SCHMIDT

☒ Date: 24.4.2002

Werner Stockhausen
Werner STOCKHAUSEN

Attachment "B5"

99 0055 US

2156

ASSIGNMENT

In Consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, we the undersigned,

Martin HIRSCH, Am Vogelschutz 5, Friedrichsdorf, Germany;

Andreas ORTH, ~~Römerstrasse 7~~, Friedrichsdorf, Germany; *Obere Römerhofstrasse 132*

Eberhard STOLARSKI, ~~Taunusstrasse 104b~~, Oberursel, Germany; *Heuwichstr. 31*

Hans-Werner SCHMIDT, Hasselhorstweg 9, Frankfurt/Main, Germany; and

Werner STOCKHAUSEN, An der Bleiche 4, Bad Vilbel, Germany

hereby sell, assign and transfer to

OUTOKUMPU Oyj

a company of Finland having a place of business at

Riihitontuntie 7 D

02202 Espoo

Finland

its successors, assigns, and legal representatives, our entire right title and interest for the United States and all foreign countries, in and to the improvements disclosed in the application for United States Letters Patent which has been executed by the undersigned concurrently herewith as the US national phase of PCT application PCT/EP00/06174 filed 3 July 2000 and which is entitled

DEVICE THERMALLY TREATING GRANULAR SOLID MATTER

and in and to the application and all divisional, continuing, substitute, renewal, reissue, and all other applications for Letters Patent which have been or shall be filed in the United States and all foreign countries on the improvements; and in and to all original and reissued patents which have been or shall be issued in the United States and all foreign countries on the improvements.

We agree that the Assignee may apply for and receive Letters Patent for the improvements in its own name; and that, when requested, without charge to but at the expense of the Assignee, its successors, assigns, and legal representatives, to carry out in good faith the intent and purpose of this Assignment, the undersigned will execute all rightful Oaths, Assignments, Powers of Attorney, and other papers; communicate to the Assignee, its successors, assigns, and representatives, all facts known to the undersigned relating to the improvements and the history thereof; and generally do everything possible which the Assignee, its successors, assigns, or representatives shall consider desirable for aiding in securing and maintaining proper patent protection for the improvements and for vesting title to the improvements and all applications for patents and all patents on the improvements in the Assignee, its successors, assigns, and legal representatives; and

We covenant with the Assignee, its successors, assigns, and legal representatives that no assignment, grant, mortgage, license, or other agreement affecting the rights and property herein conveyed has been made to others by the undersigned, and that full right to convey same as herein expressed is possessed by the undersigned.

Date: 03/20/02

Martin Hirsch
Martin HIRSCH

Date: 03/20/02

Andreas Orth
Andreas ORTH

Date: 04/27/02

Kristina Stolarski
Eberhard STOLARSKI

(deceased) executed by Kristina STOLARSKI, Executrix

22156

Ser. No. Not known - US phase of PCT/EP00/06174

8 Date: 27/03/02

Hans-Werner Schmidt
Hans-Werner SCHMIDT

8 Date: _____

Werner STOCKHAUSEN

Exhibit "E"

22156

IN THE U.S. PATENT AND TRADEMARK OFFICE

Inventor Martin HIRSCH et al
Patent App. 10/088,426 (US Nat'l phase of PCT/EP00/06174)
Filed 12 June 2002
For DEVICE FOR THERMALLY TREATING GRANULAR SOLID
 MATTER
Art Unit Not known
Hon. Commissioner of Patents
Washington, DC 20231

COMMUNICATION

The undersigned submits herewith certified copy of the Inheritance Certificate together with a sworn English translation thereof, showing the legal heirs of the deceased inventor Eberhard STOLARSKI.

Respectfully submitted,
The Firm of Karl F. Ross P.C.

By: Herbert Dubno, Reg. No. 19,752
Attorney for Applicant

29 July 2002
5676 Riverdale Avenue Box 900
Bronx, NY 10471-0900
Cust. No.: 535
Tel: (718) 884-6600
Fax: (718) 601-1099
rg
Enclosure



Exhibit "A"

22156 - Martin HIRSCH et al. US Phase of PCT/EP00/06174
DEVICE FOR THERMALLY TREATING GRANULAR SOLID MATTER
PCT TRANSMITTAL, PCT Application, PCT Documents, Search Report
ENGLISH TRANSLATION JC07 Rec'd PCT/PTO 15 MAR 2002

1 sheet drawing
PRELIMINARY AMENDMENT
FORM PTO-1449 w/copies
Form PTO-2038 for fee
\$ 1,040.00

(due 17 March 2002)

DATE OF EXAMINATION
FIRST CLASS MAIL
I hereby certify that this is a true and correct copy of the original as filed with the Patent Office.
Patented in the United States of America
March 15, 2002
20201, on

MAR 15 2002

E-V018431536

10/088426

Signature
The Firm of Karl F. Rose, P.C.

Attachment "B1"

22156 - Martin HIRSCH et al.

Ser. No. 10/088,426 (US Phase of PCT/EP00/06174)

COMPLETION OF FILING REQUIREMENTS

PCT Transmittal

DECLARATION & POWER OF ATTORNEY

Preliminary Examination Report

Assignment w/cover letter &

Form PTO-2038 for fee \$40.00

Form PTO-2038 for fee \$130.00

(-)

2

CERTIFICATE OF EXPRESS MAIL
FIRST CLASS MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail or as Express Mail if the number of the Express Mail mailing label is provided below in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on

JUN 12 2002

EV018432046

Express Mail Label Number

Signature

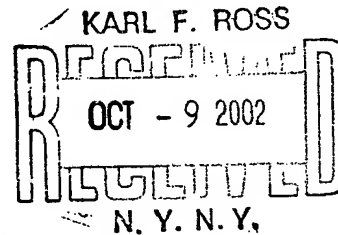
The Firm of Karl F. Ross, P.C.

L.11 Rec'd PCT/PTO JUN 12 2002



01 OCT 2002

The Firm of Karl F. Ross P.C.
5676 Riverdale Ave., Box 900
Riverdale (Bronx), NY 10471



In re Application of
Hirsch et al.
Application No. 10/088426
PCT No.: PCT/EP00/06174
Int. Filing Date: 03 July 2000
Priority Date: 17 September 1999
Atty. Docket No.: 22156
For: Device For Thermally Treating
Granular Solid Matter

DECISION ON
PAPERS UNDER
37 CFR 1.42

This is in response to the "Communication" filed on 24 June 2002 which is being treated as a petition under 37 CFR 1.181.

BACKGROUND

This international application was filed on 03 July 2000, and claimed a priority date of 17 September 1999. The International Bureau transmitted a copy of the published international application to the USPTO on 29 March 2001. A Demand electing the United States was filed before the expiration of 19 months from the priority date. Accordingly, the 30 month time period to file the basic national fee in the U.S. expired as of midnight on 17 March 2002.

On 15 March 2002, applicants filed *inter alia* the basic national fee.

On 18 June 2002, a Notification of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the filing of an executed oath or declaration and a surcharge under 37 CFR 1.492(e).

The instant "Communication" was filed on 24 June 2002.

DISCUSSION

The instant "Communication" is accompanied by copies of a Transmittal Letter (Form PTO-1390) including a fee calculation sheet, a declaration and a return postcard receipt itemizing the "PCT Transmittal" and the "Declaration and Power of Attorney" and stamped as received by the USPTO on "JUN 12 2002."

Review of the application file reveals the presence of two executed declarations

received on 12 June 2002. Accordingly, the petition under 37 CFR 1.181 is dismissed as moot.

Inspection of the declaration reveals that it has been signed by "Kristina STOLARSKI, Executrix" on behalf of deceased joint inventor Eberhard Stolarski. 37 CFR 1.42 provides in part that

In case of the death of the inventor, the legal representative (executor, administrator, etc.) Of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

Meanwhile, 37 CFR 1.497(b)(2), as amended effective 08 September 2000, provides that

If the person making the oath or declaration is not the inventor (§§ 1.42, 1.43 or 1.47), the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person signing the oath or declaration is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence and mailing address of the legal representative.

Former § 1.44 required that proof of the authority of the legal representative be submitted. Effective 08 September 2000, § 1.44 was removed and reserved. The requirement to submit proof of legal authority was thereby eliminated. Thus, the signature and accompanying identification of the legal representative is sufficient to establish that the legal representative may make application on behalf of the deceased inventor.


Review of the copy of the declaration filed on 12 June 2002 reveals that it was executed by Kristina Stolarski, acting in the capacity of legal representative for Eberhard Stolarski in accordance with 37 CFR 1.42. The declaration includes citizenship, residence and post office address information for Eberhard Stolarski, but does not include the citizenship, residence and mailing address of the legal representative. As such, the declaration is not in compliance with 37 CFR 1.497(b)(2). Accordingly, it would not be appropriate to accord the application status pursuant to 37 CFR 1.42 on the basis of the present record.

DECISION

The petition under 37 CFR 1.181 is DISMISSED AS MOOT.

The papers under 37 CFR 1.42 are **DISMISSED**, without prejudice.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



Leonard Smith
PCT Legal Examiner
PCT Legal Office



George M. Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
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22156

Exhibit "G"

Certificate of Express or First-Class Mailing

I hereby certify that I have deposited this correspondence with the US Postal Service as first-class or, if a mailing-label number is given below, as express mail addressed to Comm. of Patents, Washington, DC, 20231 on the below-given date.

DEC 23 2003

EY257246448

Express-mail label number

Signature

IN THE U.S. PATENT AND TRADEMARK OFFICE

Inventor Martin HIRSCH et al
Patent App. 10/088,426 (US Nat'l phase of PCT/EP00/06174)
Filed 12 June 2002
For DEVICE FOR THERMALLY TREATING GRANULAR SOLID
 MATTER

Art Unit Not known

Hon. Commissioner of Patents
Attn: PCT Legal Office
Box 1450
Alexandria, VA 22313-1450

COMMUNICATION

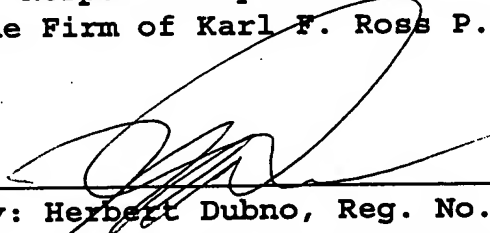
Applicant, by its attorney, the undersigned, respectfully requests a statement as to the status of the application and assignment of this case for action at an early date.

On or about 1 October 2002, a communication issued dismissing a petition under 37 CFR 1.181 as moot and treating the papers under 37 CFR 1.42 as ineffective without prejudice. In accordance with the understanding of the undersigned, the case should therefore have been assigned to an Examiner. On a recent check through PAIR has shown that the application is still undergoing preexamination processing and in Group Art Unit 1764 or still at the legal department. That is not understood.

Nor does Applicant understand why the communication of 29 July 2002, which was submitted prior to issuance of the 1 October 2002 communication and not acknowledged therein, was not listed as a portion of the file contents. That communication contained the address of Kristina Stolarski and Eberhard Stolarski which was requested in the decision on papers under 37 CFR 1.42 it would appear that a formal filing certificate should have issued in the case and that the case should have been passed to publication sometime ago.

Clarification is, therefore, requested.

Respectfully submitted,
The Firm of Karl F. Ross P.C.



By: Herbert Dubno, Reg. No. 19,752
Attorney for Applicant

db-

DATED: 17 December 2003
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PAIR page

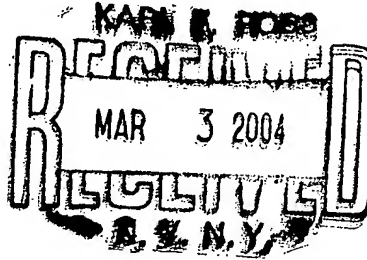


UNITED STATES PATENT AND TRADEMARK OFFICE

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Alexandria, Virginia 22313-1450
www.uspto.gov

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/088,426	Martin Hirsch	22156

535
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INTERNATIONAL APPLICATION NO.	
PCT/EP00/06174	
I.A. FILING DATE	PRIORITY DATE
07/03/2000	09/17/1999

CONFIRMATION NO. 1769

371
ABANDONMENT/TERMINATION
LETTER



OC000000011995234

Date Mailed: 03/01/2004

NOTIFICATION OF ABANDONMENT

The United States Patent and Trademark Office in its capacity as a Designated / Elected Office (37 CFR 1.495) has made the following determination:

- Applicant has failed to properly respond to Decision on papers under 37 CFR 1.42, dated October 01, 2002.

Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.495, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

BARBARA A CAMPBELL

Telephone: (703) 305-3631

PART 1 - ATTORNEY/APPLICANT COPY